

DEFV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PRINT OR ELECTRONIC PUBLICATION

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PAUL ORTIZ,

Petitioner,

FILED

IN CLERK'S OFFICE

U.S. DISTRICT COURT, E.D.N.Y.

-against-

★ AUG 1 2009 ★

09-CV-2631 (RJD)

WARDEN,

BROOKLYN OFFICE

Respondent.

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DEARIE, Chief Judge:

Petitioner Paul Ortiz brought this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court initially directed Petitioner to show cause why the petition should not be dismissed as time-barred. The Court has since learned that Petitioner had previously filed a prior petition pursuant to 28 U.S.C. § 2254 challenging the same conviction. Accordingly, the Court finds that it cannot consider the instant petition and hereby transfers it to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. The Court's Order to Show Cause entered on July 8, 2009 is vacated.

On August 1, 1996, petitioner was convicted in New York Supreme Court, Kings County, of robbery and assault and sentenced to an indeterminate term of 12 years to life imprisonment. His appeal to the New York Supreme Court, Appellate Division, Second Department, was denied on January 12, 1998, People v. Ortiz, 666 N.Y.S.2d 929 (App. Div. 1998), and his application for leave to appeal to the New York Court of Appeals was denied on March 2, 1998, People v. Ortiz, 694 N.E.2d 892, 91 N.Y.2d 944 (1998). Petitioner filed two post-conviction motions in New York state court, which were denied. People v. Ortiz, 704 N.Y.S.2d 851 (2000) and People v. Ortiz, 731 N.E.2d 625, 94 N.Y.2d 951 (2000). Petitioner

also filed a motion for re-argument of his initial appeal. The Appellate Division denied the motion by order dated January 29, 2009. People v. Ortiz, slip op., Ind. No. 12430/95 (Jan. 29, 2009) (see Pet., Exhibit 1). The Court of Appeals dismissed the application for a certificate to appeal on April 7, 2009. People v. Ortiz, slip op., Ind. No. 12430/95 (Apr. 7, 2009) (see Pet., Exhibit 2).

After this Court directed Petitioner to file an affirmation showing cause why the petition should not be dismissed as time-barred, the Office of the District Attorney for Kings County, acting on behalf of respondent Warden, filed a letter containing additional procedural history. Therein, Respondent directed the Court's attention to Petitioner's previous petition challenging this same conviction. See Ortiz v. Artuz, No. 00 CV 4958 (RR), slip op. (E.D.N.Y. Sept. 23, 2002)(petition denied).

The Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications." Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003). Therefore, petitioner must move in the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Torres, 316 F.3d at 151-52 (citing Liriano v. United States, 95 F.3d 119 (2d Cir. 1996) (*per curiam*)). This order closes this case. If the Second Circuit authorizes petitioner to proceed in this matter,

petitioner shall move to reopen under this docket number. The Court's Order to Show Cause entered on July 8, 2009 is vacated.

SO ORDERED.

s/Raymond J. Dearie
RAYMOND J. DEARIE
United States District Judge

Dated: Brooklyn, New York
August 5, 2009